

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

A.P.,

Plaintiff,

v.

KILOLO KIJAKAZI, et al.,

Defendants.

Case No. [23-cv-01184-EMC](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Docket Nos. 9, 13

Pending before the Court is Plaintiff's Motion for Summary Judgment ("Pl's Mot."), Docket No. 9, and Defendants' Cross-Motion for Summary Judgment ("D's Mot."), Docket No. 13. Claimant A.P. seeks review of the Commissioner of Social Security Administration's final decision denying her applications for both disability insurance benefits and supplemental security income. *See generally* Pl's Mot. A.P. has exhausted her administrative remedies with respect to her claim of disability; this Court has jurisdiction pursuant to 42 U.S.C. § 405(g). A.P. seeks an order reversing the agency decision and remanding for payment of benefits, or alternatively, remanding for further administrative proceedings. Defendant Kilolo Kijakazi, in her capacity as Commissioner of the Social Security Administration ("SSA"), opposes the motion and cross-moves for summary judgment. Docket No. 13.

Having considered the parties' briefs and the administrative record, the Court hereby **GRANTS** A.P.'s motion for summary judgment and **DENIES** the SSA's motion cross-motion for summary judgment. The case shall be remanded for further proceedings before the Administrative Law Judge ("ALJ") in accordance with this Order.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 On May 1, 2020, A.P. filed a Title II application for disability insurance benefits and a
3 Title XVI application for supplemental security income. *See* AR 227-241. In both applications,
4 A.P. alleged a disability beginning March 26, 2020. *See* AR 228, 238. A.P. alleged both physical
5 and mental disability due to a status post-Covid-19 infection, pneumonia, anxiety, depression, and
6 post-traumatic stress disorder (“PTSD”). *See* AR 159.

7 A.P.’s claims were initially denied on October 22, 2020, and again upon reconsideration on
8 March 11, 2021. *See* AR 144, 159. A.P. then filed a request for a hearing before an
9 administrative law judge (“ALJ”). *See* AR 165-166. On November 4, 2021, ALJ Benton held a
10 telephonic hearing to reconsider whether A.P. is disabled under the relevant sections of the Social
11 Security Act. *See* AR 21. The ALJ again denied A.P.’s claims on December 27, 2021. AR 18.
12 The Appeals Council subsequently reviewed A.P.’s request for appeal and affirmed ALJ Benton’s
13 decision on January 10, 2023, adopting the ALJ decision as the final decision of the Commissioner
14 of Social Security Administration (the “Commissioner”). AR 1-3.

15 A. Evidence Considered

16 A.P. was initially hospitalized in March 2020 due to Covid-19 complications, with
17 hypoxia, pneumonia, sepsis, acute renal failure, and acute encephalopathy. *See* AR 28, 382, 462.
18 After approximately two months in intensive care, she was improving, and was discharged to a
19 rehabilitation facility. *See* AR 28, 472. She was discharged from the rehabilitation facility on
20 June 3, 2020, and continued out-patient therapy services. *See* AR 28, 471.

21 During the hearing, A.P. testified that she suffers from both physical and mental
22 impairments. With respect to her physical impairments, she stated that she has difficulty breathing
23 including getting winded quickly, hindering her ability to walk and stand. AR 48-49. She also
24 attested to having difficulty walking because of an issue with her balance, and difficulty sitting
25 down for more than 45 minutes without experiencing back and leg pain. *See* AR 48-49. She also
26 reported being unable to lift more than a gallon of milk. *See* AR 49. She ultimately stopped
27 working after she was infected with Covid-19 which she contracted at her last job. *See* AR 45.

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1 Regarding A.P.’s mental impairments, she stated that she has a fear “of the outside world.”
2 AR 53-54. Specifically, A.P. has anxiety about returning to work because she was infected with
3 Covid-19 at her last job even though she “did everything right.” AR 53. A.P. attests that the
4 Covid-19 infection that she contracted caused her lungs to fill up with liquid which led to the
5 breathing issues she is experiencing today. *See* AR 52. A.P. previously resigned from a job
6 because she was experiencing severe anxiety, depression, and PTSD. *See* AR 46.

7 A.P. attested that she lives alone with her three children—who are ages nine, five, and
8 four. AR 50-51. A.P. attests that she is able to care for her children on her own to an extent; she
9 can cook light meals, help the children with their homework, watch TV, and play boardgames.
10 *See* AR 50-51. On the other hand, A.P. testified to experiencing several limitations. While A.P.
11 can cook and do the dishes, she must do both in increments. *See* AR 51. She cannot sweep or
12 mop, she cannot go grocery shopping, and she cannot do laundry on her own and needs her sisters’
13 assistance to do all three. *See* AR 51-52. Finally, A.P. testified that she does not have any hobbies
14 and does not go anywhere unless she is required to—e.g., for doctors’ appointments. *See* AR 51.
15 But even when required to go outside, she needs her sisters to accompany her due to her severe
16 anxiety of contracting Covid-19 again. *See* AR 51.

17 In addition to A.P.’s testimony, ALJ Benton considered A.P.’s treatment history and the
18 objective medical evidence in the record. *See* AR 28-32. The ALJ considered A.P.’s
19 improvement in both physical and mental health from the time she was released from
20 rehabilitation until 2021, citing a clear chest, a normal speaking rate, improved oxygenation,
21 normal breath sounds, normal extremity function, and stable neurological signs. *See id.* The ALJ
22 also reasoned that the level of care that A.P. sought after being discharged from rehabilitation was
23 inconsistent with how severe she claimed both her physical and mental disabilities were. *See* AR
24 28-29. Specifically, one year after her discharge, A.P. was not seeing a pulmonologist even
25 though her primary care doctor referred her to one because her insurance was inactive. *See* AR
26 28, 925. A.P. was also unable to maintain counseling for her anxiety after being discharged from
27 the hospital due to a lack of insurance. *See* AR 29, 763.

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1 B. ALJ Determination

2 ALJ Benton employed the five-step sequential process to determine whether A.P. was
3 disabled. *See* 20 C.F.R. §§ 404.1520(a)(4); 416.920(a)(4). Under that framework, if an ALJ finds
4 that the claimant is disabled at a given step, then the ALJ does not need to proceed to the next
5 step. *See* 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If the ALJ does not find that the claimant
6 is disabled, the ALJ will continue to the next step. *See* 20 C.F.R. §§ 404.1520(a)(4),
7 416.920(a)(4).

8 At step one, ALJ Benton considered whether A.P. was engaged in substantial gainful
9 activity. *See* 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). She found that A.P. had not
10 engaged in substantial gainful activity since March 26, 2020, i.e., the alleged disability onset date.
11 *See* AR 23.

12 At step two, ALJ Benton evaluated whether A.P. suffered from a “severe medically
13 determinable physical or mental impairment, or combination of impairments” for a continuous
14 period of at least 12 months. *See* 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii); see also 20
15 C.F.R. §§ 404.1509, 416.909. The ALJ determined that A.P. suffered from the following severe
16 impairments: “status post Covid-19 infection and pneumonia, obesity, diabetes, anxiety,
17 depression, and [PTSD].” AR 23-24.

18 At step three, if an impairment or combination of impairments meets or is equal to one of
19 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 in both duration and severity,
20 then the ALJ must find the claimant to be disabled. *See* 20 C.F.R. §§ 404.1520(a)(4)(iii),
21 416.920(a)(4)(iii). ALJ Benton concluded that A.P.’s impairments did not meet or equal a listed
22 impairment. *See* AR 24. With respect to A.P.’s mental impairments, the ALJ assessed her
23 symptoms according to “paragraph B” and “paragraph C” criteria but found they were not
24 satisfied. *See* AR 24-26.

25 At step four, ALJ Benton determined whether A.P.’s residual functional capacity allowed
26 her to perform her past relevant work. *See* 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
27 With respect to A.P.’s physical residual functional capacity, ALJ Benton found that she had the
28 ability to perform light work, and that she “can occasionally climb stairs and ramps; can never

climb ladders, ropes, and scaffolds; can occasionally stoop, kneel, crouch, and crawl; must avoid concentrated exposure to hazards such as unprotected heights, machinery, moving mechanical parts; must avoid even moderate exposure to dusts, odors, fumes, gases, humidity, and other pulmonary irritants.” AR 26–27. With respect to A.P.’s residual mental functional capacity, the ALJ concluded that A.P. “can understand, remember, and carry out simple instructions; can occasionally interact with supervisors, coworkers, and the public; can make simple work decisions; can occasionally tolerate changes in work locations; and cannot work at a strict production rate, such as on an assembly line.” AR 27. Based on the physical and mental residual functional capacity assessed, the ALJ found that A.P. was not able to perform past relevant work, which was consistent with the vocational expert’s testimony at the ALJ’s hearing. *See* AR 32; *see also* AR 56-57 (hearing transcript).

Finally, at step five, the ALJ considered whether, given A.P.’s age, education, work experience, and residual functional capacity, there were jobs that exist in significant numbers in the national economy that she could perform. *See* 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). The ALJ agreed with the vocational expert’s testimony that there were such jobs, such as photocopy machine operator, non-postal mail clerk, and office helper. *See* AR 33-34. Accordingly, ALJ Benton issued the decision finding A.P. not disabled. *See* AR 34. A.P. Thereafter, the Appeals Council denied A.P.’s request for review of the ALJ’s decision. AR 1-3. The Appeals Council stated:

We found no reason under our rules to review the Administrative Law Judge’s decision. Therefore, we have denied your request for review. This means that the Administrative Law Judge’s decision is the final decision of the Commissioner of Social Security in your case.

Id. A.P. now seeks to overturn the ALJ’s decision, which is the final decision of the Commissioner in her case. *See generally* Pl’s Mot.

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II. LEGAL STANDARD

After a final decision on a claim for benefits has been issued, a claimant may seek judicial review of that decision by a district court. 42 U.S.C. § 405(g). The Commissioner's decision will be disturbed only if: (1) the ALJ has committed legal error; or (2) if the ALJ's findings are not supported by substantial evidence. *Lingenfelter v. Astrue*, 504 F.3d. 1028, 1035 (9th Cir. 2007). Where, as here, the Appeals Council denies a claimant's request for review and adopts the ALJ's decision as the final decision of the Commissioner, the district court reviews the contents of the ALJ's decision to determine if remand is appropriate. *See id.* at 1030 & n.2, 1033-35.

III. DISCUSSION

A. Legal Error

A.P. claims that the ALJ's decision is erroneous on the following four grounds: (1) the record is not complete because the ALJ did not obtain additional worker's compensation records; (2) the ALJ did not properly consider the effect of A.P.'s obesity at step three of the analysis wherein the ALJ determined that A.P.'s impairment was not equal to one of the listed impairments in the disability statute; and (3) the ALJ erred in finding A.P.'s testimony as to the extent of her disability not credible. Pl's Mot. at 2. Each argument is addressed in turn below.

1. Completeness of the Record

A.P. argues that the ALJ erred by failing to complete the record. Specifically, A.P. claims that ALJ Benton had a duty during the hearing to affirmatively ask whether her worker's compensation records were exhibited. Pl's Mot. at 3.

An ALJ has a duty to develop the record "fully and fairly"; this is true even when the claimant is represented by counsel. *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). The ALJ's duty to "conduct an appropriate inquiry" is triggered by "ambiguous evidence, or the ALJ's own finding that the record is inadequate to allow for proper evaluation of the evidence." *Id.* The ALJ may discharge this duty by subpoenaing the claimant's physicians, submitting questions to the claimant's physicians, continuing the hearing, or keeping the record open after the hearing to allow for supplementation of the record. *Id.*

A.P. argues that the ALJ erred because she did not inquire into whether A.P.'s worker

1 compensation records were in evidence. However, at least some of A.P.'s workers' compensation
 2 records and medical examinations are included in the administrative record at Exhibit 14F. *See*
 3 AR 855-913. Not only are they in the record, ALJ Benton explicitly discusses Dr. Schmitz'
 4 worker's compensation medical report at step four of her analysis. *See* AR 31-32. A.P. fails to
 5 address why the included compensation records were ambiguous, or otherwise inadequate,
 6 triggering the ALJ's duty to ask for additional records. *See* Pl's Mot. at 4. These circumstances
 7 are akin to *Harris v. Commissioner of Social Security Administration*, 605 Fed. Appx. 612, 614
 8 (9th Cir. 2015). There, the Ninth Circuit rejected a nearly identical argument. *Id.* Specifically,
 9 the claimant failed to explain why the record was ambiguous or inadequate without the worker's
 10 compensation records, and the claimant failed to explain how the worker's compensation records
 11 would have compelled a more favorable outcome. *Id.* A.P.'s argument suffers from the same
 12 deficiency; worker compensation records were included in the record, and A.P. fails to explain
 13 why these included records were insufficient. Accordingly, A.P.'s argument is unavailing.

14 A.P.'s reliance upon *Tonapetyan v. Halter*, 242 F.3d 1144 (9th Cir. 2001) does not require
 15 a different outcome as that case is distinguishable. Pl's Mot. at 3. Specifically, in *Tonapetyan*, the
 16 ALJ relied heavily on the testimony of a medical expert who found that the evidence of the
 17 claimant's mental impairment was too ambiguous to make a determination about the claimant's
 18 disability in denying benefits. *See id.* at 1150. The Ninth Circuit held that the ALJ erred by
 19 ignoring the expert's concerns and for relying on the ambiguous opinion, without obtaining a more
 20 detailed report. *See id.* at 1150-51. In the case at bar, A.P. does not argue the records that were
 21 included were ambiguous or otherwise insufficient. In light of the above, the Court finds no error
 22 in the ALJ's development of the record.

23 2. Factoring in Obesity

24 A.P. next argues that the ALJ erred in failing to consider how her obesity impacted the rest
 25 of her impairments. A.P. did not specify which step of the ALJ's analysis this alleged deficiency
 26 affected. *See* Pl's Mot. at 8. However, A.P. relies upon *Burch v. Barnhart*, 400 F.3d 676 (9th Cir.
 27 2005) to make her argument as to this point. *Id.* In *Burch*, the court considered the extent to
 28 which obesity must be considered as a compounding factor alongside other impairments at step

three of the analysis. 400 F.3d at 681-84. At step three the ALJ determines if the severity of the claimant’s impairment meets or equals an impairment enumerated by the statute. *See* §§ 404.1520(a)(4)(iii). Because of this citation, the Court construes this argument as relating to step three of the analysis wherein the ALJ assessed the severity of A.P.’s limitations and determined if the impairments were equivalent to a listed impairment in the statute (“equivalency”).

In social security cases, the claimant—not the ALJ—carries the initial burden of proving the existence of a qualifying disability. *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir. 1989). Obesity is not a separately listed impairment recognized in the statute. *Burch*, 400 F.3d at 682; *see also* SSR 19-2p (2019) (policy interpretation ruling regarding impact of obesity). “[H]owever, the functional limitations caused by the MDI of obesity, either alone or in combination with another impairment(s), may medically equal a listing.” SSR 19-2p (2019). To this end, equivalence can be established if a claimant has multiple impairments, including obesity, none of which meet the listing requirement, but are equivalent to a listed impairment in the aggregate. *See id.* Importantly, however, an ALJ is not required to discuss the combined effects of a claimant’s obesity or other impairments or compare them to any listing in an equivalency determination, *unless* the claimant presents evidence to establish equivalence. *See Burch*, 400 F.3d at 683; *see also Lewis v. Apfel*, 236 F.3d 593, 514 (9th Cir. 2001) (holding that an ALJ’s failure to consider equivalence was not reversible error because the claimant did not offer any theory, plausible or otherwise, as to how their impairments combined to equal a listing impairment).

In the present case, A.P. did not specify which listing she believes her impairments are equal to, nor did A.P. present evidence which would support finding she suffered from a listed impairment due to her obesity, alone or in combination with another impairment. *See, e.g.,* AR 48-54 (testimony of A.P. regarding her symptoms and impairments but not discussing impact of obesity); AR 54-59 (testimony of vocational expert). Even before this Court, A.P.’s briefing is silent as to any evidence or theory of equivalency that she purports was erroneously rejected by the ALJ. *See* Pl’s Mot. at 8. As the ALJ’s duty to analyze the effects of a claimant’s obesity is triggered only when the claimant presents evidence to establish equivalence, the ALJ did not err in this respect. *Burch*, 400 F.3d at 683; *Lewis*, 236 at 514. And while A.P. asserts that the ALJ erred

for failing to consider A.P.’s obesity, this is not entirely accurate. Specifically, the ALJ did recognize the progression of A.P.’s BMI, fatigue, respiratory rate, ambulation, and cardiac signs in making her determination as to listed disability at step three of the analysis. *See* AR 24 (“I considered the following listings and rulings: SSR 19-2p, obesity.”). Accordingly, the Court finds no error in the ALJ’s treatment of A.P.’s obesity.

3. Credibility Determination

A.P. also argues that the ALJ erred in discrediting A.P.’s testimony regarding the extent of her subjective pain, informing her limited functional capacity, as is considered at step four of the analysis. Pl’s Mot. at 4-7; §§ 404.1520(a)(4)(iv) (assessing the residual functional capacity a person maintains notwithstanding their impairment and whether the individual can still perform past relevant work).

At step four of the analysis, the ALJ determined that A.P. maintained some residual functional capacity and was not completely debilitated as A.P. attested. AR 26–27. To this end, the ALJ determined that A.P. had only moderate limitations as opposed to marked ones. AR 31. Specifically, the ALJ found A.P.’s testimony only partially credible, stating “[her] medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, [her] statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.” AR 28. In making this adverse credibility determination the ALJ relied upon medical reports in the record, A.P.’s testimony as to her activities of daily living, and A.P.’s treatment history to find A.P.’s testimony. *See* AR 27-32.

a. Adverse Credibility Based Upon Medical Reports

A.P. first argues that the ALJ’s adverse credibility determination based upon medical evidence in the record was erroneous. Pl’s Mot. at 4-7. Specifically, A.P. argues that the ALJ did not satisfy the “specific, clear, and convincing” standard in making this determination, which applies when an ALJ deems a claimant’s testimony as to subjective pain not credible. *See id.*

An ALJ must undergo a two-step analysis to determine whether a claimant’s testimony regarding subjective pain is credible. *Lingenfelter*, 504 F.3d. at 1035-36. First, the ALJ

determines whether the claimant has presented objective medical evidence of an underlying impairment “which could reasonably be expected to produce the pain or other symptoms alleged.” *Id.* at 1036 (citing *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). If the claimant meets the first step and there is no evidence of malingering, the ALJ can only reject the claimant’s testimony about the severity of her symptoms “by offering specific, clear and convincing reasons for doing so” and supporting these reasons with substantial evidence. *Smolen v. Chater*, 80 F.3d 1273, 1281, 1284 (9th Cir. 1996); *see also Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (“[g]eneral findings are insufficient.”). The “specific, clear, and convincing” standard requires the ALJ to identify “which testimony she [finds] not credible, and . . . which evidence contradict[s] that testimony.” *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020).

In determining the credibility of A.P.’s testimony as to physical and mental symptoms, the ALJ did not find that A.P. was malingering and found that her “medically determinable impairments could reasonably be expected to cause the alleged symptoms.” AR 28. Accordingly, the clear and convincing standard is applicable to the ALJ’s finding that A.P.’s testimony regarding the extent of her subjective pain was not credible. *See Lambert*, 980 F.3d at 1277.

In *Lambert* the Ninth Circuit upheld a determination that the ALJ did not meet the clear and convincing standard in discrediting the claimant’s testimony. 980 F.3d at 1277. There, the ALJ explained in their decision that “the claimant’s statements concerning the intensity, persistence and limiting effects of [her] symptoms are not entirely consistent with the objective medical and other evidence for the reasons explained in this decision.” *Id.* The Ninth Circuit explained that such a “boilerplate statement,” does not meet the clear and convincing standard because it does not identify which parts of the claimant’s testimony were not credible and why. *Id.* Although the ALJ in *Lambert* did provide a detailed overview of the medical evidence in the record, the court emphasized that “providing a summary of medical evidence . . . is not the same as providing clear and convincing reasons for finding a claimant’s symptom testimony not credible.” *Id.* at 1278 (quoting *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015)). The ALJ was instead required to link the testimony she found not credible with the evidence from the record that contradicted that testimony” which was not done in that case. *Id.* at 1277.

1 Similarly, in *Brown-Hunter*, the Ninth Circuit rejected the ALJ’s finding that the
 2 claimant’s testimony was not credible for failure to meet the clear and convincing standard. 806
 3 F.3d at 495. In that case, the ALJ concluded that the claimant had a residual functional capacity to
 4 perform “light work.” *See id.* at 490–91. To support this finding, the ALJ paraphrased the
 5 claimant’s testimony regarding her pain and limitations, followed by a summary of her treatments
 6 and medications, as well as some of her activities of daily living. *See id.* at 491. The ALJ
 7 followed this up with “eight paragraphs to summariz[e] the medical evidence in the record.” *See*
 8 *id.* The ALJ then concluded that the claimant was only partially credible, stating that:

9 After careful consideration of the entire record, including the
 10 medical evidence and the testimony at the hearing, I find the
 11 functional limitations resulting from the claimant’s impairments
 12 were less serious than she has alleged. . . . [While] the medical
 evidence supports a findings that the claimant’s impairments . . .
 impos[e] some restrictions, [they] did not prevent her from engaging
 in all work-related activities.

13 *Id.* The court emphasized that making a single conclusory statement that the claimant’s testimony
 14 has been considered and summarizing the administrative record and medical evidence to support a
 15 finding of residual functional capacity “is not the same as providing clear and convincing reasons
 16 for finding the claimant’s symptom testimony not credible.” *Id.* The court held that the ALJ fell
 17 short of meeting the standard because she never identified “which testimony she found not
 18 credible and never explained which evidence contradicted that testimony.” *Id.* at 494-95. In other
 19 words, the ALJ erred because a specific linkage between the testimony and particular contractor
 20 evidence was not provided. *Id.*

21 On the other hand, in *Smartt v. Kijakazi*, the Ninth Circuit held that the ALJ properly
 22 provided specific, clear, and convincing evidence to discount the claimant’s subjective pain. 53
 23 F.4th 489 (2022). The ALJ in that case relied on the objective medical evidence, activities of daily
 24 living, and evidence of conservative treatment to make the credibility determination. *Id.* at 497.
 25 Importantly, in making the determination in *Smartt*, the ALJ identified a direct and specific
 26 contradiction in the claimant’s testimony regarding her ability to drive:

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At hearings before the ALJ in August 2018 and April 2019, Smartt repeatedly testified that she had not driven since her neck surgery in 2015. But in her Daily Activities Questionnaire dated April 10, 2016, Smartt reported that she routinely drove a car, and her typical daily activities included driving her daughter to school.

Id. The ALJ there also identified multiple examples of Smartt’s inconsistent use of mobility aids and contrasted them to the claimant’s testimony about the extent of her limitations:

In her agency appeal in 2016, Smartt reported: “After contracting cellulitis in my right leg, which was injured in 2009, I have been unable to walk without the assistance of a walker.” Smartt also testified that she uses a cane, crutch, and wheelchair for assistance. . . . Even when she visited the emergency room for pain and swelling in her right leg on March 10, 2016, Smartt was “able to ambulate on her leg” with no mention of a mobility aid. . . . By contrast, Smartt typically appeared with a walker at Pain Center appointments and visits associated with her disability application. Despite her sporadic use of mobility aids, she told the examining physician in September 2018 that she “ha[d] been using a walker . . . since 2016.”

Id. In light of the specific linkage, the Ninth Circuit held that the ALJ met the clear and convincing standard in finding the claimant not credible by identifying specific discrepancies between the claimant’s testimony and the objective medical evidence. *Id.* at 497–98.

Accordingly, for the ALJ to meet the clear and convincing standard, it is not sufficient for an ALJ simply to summarize the medical evidence at issue in the case and make a generalized statement that that record undermines the claimant’s testimony. *See Lambert*, 980 F.3d at 1277; *Brown-Hunter*, 806 F.3d at 490-91. Rather, to meet the clear and convincing standard, the ALJ must identify, with specificity, the inconsistent portions of the medical report, link that evidence to the aspects of the testimony that are rendered not credible, and explain why the two are incongruent. *See Smartt*, 53 F.4th at 497; *cf. Lambert*, 980 F.3d at 1277; *cf. Brown-Hunter*, 806 F.3d at 490-91.

Here, the ALJ included a detailed summary of the medical record at issue. *See* AR 28–32. While the summary of the relevant medical evidence was extensive,¹ the ALJ did not link specific

¹ As explained in *Brown-Hunter*, it is not the length of the summary of medical evidence that is relevant, but the extent to which the ALJ connects the relevant medical record to the testimony that is purportedly not credible. 806 F.3d at 490-91 (finding that ALJ decision with eight-

1 medical evidence to the relevant testimony about A.P.’s symptoms and explain why the former
2 rendered the latter not credible. *See id.*

3 Specifically, the ALJ concluded that “the medical evidence supports some physical
4 limitations but not the degree alleged.” AR 28. To support this finding, the ALJ cited breathing
5 tests, heart rate tests, BMI, and cardiac and neurological results in the medical record which
6 showed largely normal results. AR 28. However, the ALJ did not explain why each of these tests
7 undermine A.P.’s testimony that she has difficulty breathing and quickly becomes winded
8 performing everyday tasks, including, e.g., standing, speaking, or walking. *See* AR 28, 48–49.
9 The connection between the tests cited and the ALJ’s conclusion is not obvious. Specifically, the
10 breathing, cardiac, or neurological tests cited do not appear to have been conducted when the
11 claimant was undergoing any sort of physical exertion—making them less than probative as to the
12 claimant’s ability to perform the physical tasks at issue. *See* AR 28. At the very least, the ALJ
13 failed to explicate the particular probative value of these tests to A.P.’s claimed inability to engage
14 in physical exertion.

15 The ALJ also stated that reports indicating normal “musculoskeletal signs, and intact gait
16 and extremity function” support that the claimant can still perform a reduced range of light work.
17 AR 29. While a functioning musculoskeletal system is likely necessary to perform light work,
18 such a functioning system does not solve for the breathing problems of which A.P. complains. *See*
19 AR 48-49. To illustrate, one could have normal functioning of e.g., their arms, legs, and other
20 extremities, but still be unable to perform tasks because they quickly become out of breath.
21 Because the ALJ does not identify, with any specificity, the parts of A.P.’s testimony rendered not
22 credible by these reports, or explain why the two are incongruous, it is difficult to credit the ALJ’s
23 rationale on this point. For these same reasons, the ALJ failed to meet the clear and convincing
24 standard as exemplified in *Smartt*, *Lambert*, and *Brown-Hunter*.

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27 paragraph summary of the medical record at issue insufficient to meet the clear and convincing
28 standard where the ALJ did not sufficiently link that record to the inconsistent testimony and
explain why the testimony was rendered not credible).

1 Additionally, there is substantial evidence in the record supporting A.P.’s testimony as to
2 her limited functional capacity that the ALJ did not address at all. Specifically, third party
3 statements from A.P.’s family members corroborate A.P. testimony, detailing A.P. struggles to
4 “perform exertion,” and that she “is nearly always winded.” AR 27. Additionally, reports cited by
5 the ALJ from physical therapists found that A.P. was easily fatigued. AR 28 (citing AR 484). But
6 in finding that A.P.’s physical limitations were only moderate, the ALJ did not address this
7 evidence. *See* AR 28-29.

8 The Commissioner points to additional evidence in the record demonstrating that the
9 ALJ’s conclusion about A.P.’s credibility was warranted. D’s Mot. at 9-10. For example, the
10 Commissioner explains that A.P. self-discontinued the use of her walker and discontinued
11 physical therapy for lack of participation. *Id.* Additionally, her kidney function was described as
12 “cured” when she was discharged from rehabilitation. *Id.* Even assuming, *arguendo*, that these
13 factors would undermine A.P.’s testimony, this Court is constrained to review only the reasons
14 that the ALJ explicitly asserted in her decision. *See Lambert*, 980 F.3d at 1278 (“The credibility
15 determination is exclusively the ALJ’s to make.”); *Brown-Hunter*, 806 F.3d at 491 (“Although the
16 inconsistencies identified by the district court could be reasonable inferences drawn from the
17 ALJ’s summary of the evidence, the credibility determination is exclusively the ALJ’s to make,
18 and ours only to review. . . . Thus, the inconsistencies identified independently by the district court
19 cannot provide the basis upon which we can affirm the ALJ’s decision.”). As the ALJ did not
20 discuss these aspects of the record in her decision, they are not properly considered here as a basis
21 to uphold the credibility determination. *See* AR 28-30.

22 Accordingly, the Court finds that the ALJ erred by not specifically linking A.P.’s
23 testimony to the medical record in her determination of credibility, thereby failing to meet the
24 “clear and convincing” standard. *See Burch*, 400 F.3d at 680; *see also* AR 28.²

25
26 ² Defendant argues, in a footnote, that the clear and convincing standard is inconsistent with the
27 deferential substantial evidence standard. D’s Mot. at 7, n.5. Any disagreement with the clear and
28 convincing standard must be directed “to the Court of Appeals or to the United States Supreme
Court” rather than the district court. *See, e.g., Jarrett v. Saul*, 2021 WL 4243393, *8 (N.D. Cal
2021). Accordingly, this Court offers no opinion as to the propriety of this argument; this Court is

b. Adverse Credibility Based Upon Activities of Daily Living

A.P. also argues that the ALJ erred by relying on her activities of daily living to partially discredit her testimony regarding the extent of her subjective pain and limitations. Pl’s Mot. at 6–

7. The ALJ acknowledged that A.P.’s impairments:

restrict her ability to: perform any exertion without shortness of breath, talk for long periods, stand more than a few minutes, balance, sit more than forty-five minutes, walk more than a few feet, lift more than a gallon of milk, leave the house, tolerate certain environments due to dizziness, remember, complete tasks, go out in public, and complete a normal day without additional breaks.

AR 27. Despite this, the ALJ characterized A.P. as able “to perform most activities of daily living independently” at multiple points of the opinion. AR 29, 31. Ultimately, ALJ Benton found that “[A.P.]’s testimony that she can independently care for herself and her family and perform all activities of daily living despite anxiety and unwillingness to go out and interact is inconsistent with marked limitations in adaptation.” AR 31.

An ALJ may properly come to an adverse credibility determination as to subjective pain testimony based upon activities of daily living where: (1) the activities of daily living contradict the claimant’s other testimony; and/or (2) the activities of daily living meet the threshold for transferable work skills. *Orn*, 495 F.3d at 639. In discrediting the claimant’s testimony on the basis of activities of daily living, the ALJ must again meet the clear and convincing standard. *See, e.g., Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017) (holding that the ALJ erred by not providing “clear and convincing” evidence to discredit the claimant on the basis of activities of daily living); *see Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014) (finding that the “supposed inconsistencies” identified by the ALJ between the claimant’s daily activities and her testimony did not meet the standard of clear, convincing and specific reasons); *Contreras v. Saul*, 477 F. Supp. 3d 1107, 1124 (S.D. Cal. Apr. 3, 2020) (holding that the ALJ mischaracterized the claimant’s testimony by selectively presenting some daily activities and ignoring others, and erred by failing to provide “specific, clear and convincing reasons for disregarding [those

bound to apply the clear and convincing standard as has been dictated by the Ninth Circuit Court of Appeals.

1 limitations]”).]

2 The Ninth Circuit has also repeatedly held that an ALJ may not discredit a claimant “by
3 ignoring competent evidence in the record that suggests an opposite result.” *Diedrich v.*
4 *Berryhill*, 874 F.3d 634, 642–43 (9th Cir. 2017) (holding that “[the claimant] could participate in
5 some daily activities does not contradict the evidence of otherwise severe problems that she
6 encountered in her daily life during the relevant period”); *see also Nicole N.-M. v. Commissioner,*
7 *Soc. Sec. Admin.*, 649 F. Supp. 3d 1025, 1035 (D. Or. Dec. 31, 2022) (“The ALJ cannot
8 mischaracterize statements and documents in the record or take these out of context in order to
9 reach [her] conclusion on the claimant’s credibility.”) (citing *Reddick v. Chater*, 157 F.3d 715,
10 722–23 (9th Cir. 1998)).

11 For example, in *Garrison*, the ALJ discredited the claimant using her activities of daily
12 living on the basis that the activities were inconsistent with the claimant’s testimony regarding the
13 extent of her limitations. *See* 759 F.3d at 1015. The ALJ supported the finding there by
14 emphasizing the claimant’s ability to talk on the phone, prepare meals, clean, and help take care of
15 her daughter. *Id.* at 1016. However, the ALJ ignored evidence that the claimant needed assistance
16 from her mother to complete all of the aforementioned tasks, as well as the claimant’s testimony
17 that her pain regularly prohibited her from doing laundry, picking up her daughter, carrying more
18 than a few pounds, and required her to rest after performing these activities. *Id.* Because the ALJ
19 ignored this countervailing evidence, the court held that the ALJ erred by mischaracterizing the
20 claimant’s testimony. *Id.* at 1015–16; *see Contreras v. Saul*, 477 F. Supp. 3d 1107, 1124 (S.D.
21 Cal. Apr. 3, 2020) (holding that the ALJ mischaracterized the claimant’s testimony by selectively
22 presenting some daily activities and ignoring others, and erred by failing to provide “specific, clear
23 and convincing reasons for disregarding [those limitations]”).

24 Similarly in the case at hand, ALJ Benton mischaracterized A.P.’s activities of daily living
25 by conclusorily stating that A.P. “can independently care for herself and her family and perform
26 all activities of daily living despite anxiety and unwillingness to go out and interact.” AR 31; *see,*
27 *e.g., Diedrich*, 874 F.3d at 643; *Garrison*, 759 F.3d at 1016. While A.P. did testify that she is able
28 to care for her children on her own to some extent, that she can cook light meals, and that she can

do some chores, ALJ Benton ignored A.P.’s struggles with her daily activities, including being unable to sweep or mop, go grocery shopping, do laundry, and go outside on her own. *See* AR 31, 50–52. A.P. also testified that she relies upon her nine-year old child and her sister’s help to do basic tasks such as taking out the trash, grocery shopping, doing laundry, going outside, and completing chores. *See* AR 51–52; *Garrison*, 759 F.3d at 1016 (“[The claimant] repeatedly emphasized that in performing many daily tasks, including caring for her daughter, she was heavily assisted by her mother.”). Ultimately, the ALJ’s characterization of A.P. as “able to perform *all* activities of daily living” is in direct contradiction with the record, as evidenced by A.P.’s lack of ability to do most chores independently or go outside by herself. *See* AR 31, 50–52 (emphasis added). This amounts to a mischaracterization of claimant’s testimony.

The ALJ also erred by finding that A.P.’s daily activities—if taken in the manner claimant describes them—were inconsistent with her testimony regarding the extent of her impairments. *See Garrison*, 759 F.3d at 1016. The Ninth Circuit has “repeatedly warned that ALJs must be especially cautious in concluding that daily activities are inconsistent with testimony about pain.” *Id.* (citing *Smolen*, 80 F.3d at 1297 n.7). To this end, courts find that such a determination is proper only where the activities of daily living performed meet the threshold to be considered transferable work skills. *See Contreras*, 477 F. Supp. 3d at 1124 (citing *Fair v. Bowen*, 885 F.3d 597, 603 (9th Cir. 1989); *Diedrich*, 874 F.3d at 643. For activities to be considered transferable work skills, the claimant must be “able to spend a substantial part of [her] day engaged in pursuits involving the performance of physical functions that are transferable to a work setting.” *Orn*, 495 F.3d at 639.³

³ A.P. cites to the Fourth Circuit standard in assessing the ALJ’s determination on this point. Pl’s Mot. at 7 (citing *Woods v. Berryhill*, 888 F.3d 686, 694–95 (4th Cir. 2018)). The Fourth Circuit in *Woods* stated that “[a]n ALJ may not consider the type of activities a claimant can perform without also considering the extent to which she can perform them.” *Woods*, 888 F.3d at 694–95. The Fourth Circuit approach is similar to the Ninth Circuit approach in that both consider the type of work performed and the nature of the ability to perform it. Specifically, in the Ninth Circuit it is the duration of the activity that is most relevant, *see Orn*, 495 F.3d at 639 (asking if a substantial part of the day is spent doing the theoretically transferable task), and in the Fourth Circuit it is the “extent to which [a claimant]” can perform the tasks at issue, *Woods*, 888 F.3d at 694–95, which might include duration. *Id.* Ultimately, however, it is the Ninth Circuit standard that governs this Court, and thus it is applied herein.

1 For example, in *Contreras*, the court held that the ALJ erred in part because claimant's
2 daily activities were, contrary to the ALJ finding, consistent with her testimony regarding the
3 severity of her limitations. 477 F. Supp. 3d at 1124. There, the court concluded that the
4 claimant's testimony that she could spend "an hour or two" per day on chores and cooking, going
5 to the grocery store, or watching television did not discredit the severity of the claimant's
6 limitations. *Id.* at 1125. This was because these daily activities did "not appear to take up a
7 'substantial' part of her day" and it was unclear whether "she could accomplish similar tasks in the
8 workplace." *Id.* at 1125.

9 Similarly, in *Diedrich*, the Ninth Circuit held that, in addition to the ALJ's error in
10 mischaracterizing the claimant's daily activities, the ALJ erred in determining that the daily
11 activities performed undermined the claimant's testimony. 874 F.3d at 643. Specifically, the
12 court reasoned that cooking, self-grooming, and occasional shopping were not similar to common
13 work responsibilities. *Id.* And even though the claimant was able to perform those tasks, "she
14 was likely not doing them with the consistency and persistence that a work environment requires."
15 *Id.* Lastly, because the claimant's symptoms included social anxiety, it was very likely that a task
16 was easy to perform at home but incredibly difficult to perform outside the home." *Id.*

17 Similarly, here, A.P.'s testimony reflects that she cannot complete tasks with any
18 semblance of stamina. *See, e.g.*, AR 51-52. While A.P. can do dishes and can microwave meals
19 for her children, she testified that she must do both in increments or she experiences severe back
20 pain and becomes winded. *See* AR 48-49, 51. A.P. also testified that she requires her sisters'
21 assistance to carry her clothes to the washing machine in their garage and back to the house, where
22 A.P. helps with the folding. *See* AR 51-52. That A.P. is able to spend "an hour or two" per day
23 performing these daily activities does not amount to her spending a substantial amount of her day
24 performing them, nor does it mean she could perform them in the workplace without the family
25 assistance she receives at home. For these reasons, the record does not establish these activities
26 are transferable to the work setting. *See, e.g., Contreras*, 477 F. Supp. 3d at 1125.

27 Additionally, A.P. repeatedly testified that she experiences anxiety that hinders her
28 activities of daily living. *See* AR 51-54. Specifically, she attests that she needs someone to

1 accompany her to medical appointments because of her severe fear of contracting Covid-19 again;
 2 she testified she is “so scared of the outside world” that even the mere thought of going back to
 3 work “terrifies” her. See AR 51–54. A.P.’s anxiety makes it likely that any task that is easy to
 4 perform at home will be potentially much harder for her to perform outside. See *Diedrich*, 874
 5 F.3d at 643. Therefore, A.P.’s daily activities are not inconsistent with her testimony that she is
 6 unable to work; the activities she can perform are not transferable to the work setting as
 7 transferability has been defined by the Ninth Circuit. See *Garrison*, 759 F.3d at 1016.

8 Finally, as ALJ Benton did not make specific findings “as to the pervasiveness of these
 9 activities, what they entailed, or how the physical functions displayed during the activities are
 10 transferrable to a work setting,” the ALJ’s finding that the activities of daily living rendered A.P.’s
 11 testimony not credible is erroneous. See *Contreras*, 477 F. Supp. 3d at 1125 (citing *Smith v.*
 12 *Berryhill*, 704 F. App’x 652, 653 (9th Cir. 2017) (ALJ must state “specific, clear and convincing
 13 reasons for disregarding” testimony as to limitations on activities of daily living).

14 Accordingly, the Court finds that the ALJ erred by mischaracterizing A.P.’s daily
 15 activities, by finding the activities inconsistent with A.P.’s testimony as to her limitations, and
 16 ultimately, and by failing to provide “specific, clear, and convincing” reasons for using those
 17 activities to discredit her testimony. See *Garrison*, 759 F.3d at 1016; see also *Contreras*, 477 F.
 18 Supp. 3d at 1125; *Diedrich*, 874 F.3d at 643.

19 c. Adverse Credibility Based Upon Treatment History

20 Though A.P. does not raise this argument, the ALJ appears to have also erroneously relied
 21 in part upon A.P.’s lack of treatment as a basis to find A.P.’s testimony not credible. Specifically,
 22 in making the adverse credibility determination the ALJ also stated that “[t]he level of care after
 23 [A.P.] was discharged from rehabilitation in June of 2020 is inconsistent with disabling
 24 limitations.” AR 28. On this point, the ALJ cited a report showing that the A.P. sought care by a
 25 cardiologist but did not have a pulmonologist. *Id.* The implicit reasoning utilized is that A.P.’s
 26 breathing issues were not so bad as to warrant treatment, undermining her testimony as to
 27 complete disability. See *id.* However, A.P.’s lack of treatment may be explained by the fact that
 28 A.P. did not have medical insurance, preventing her from being referred to a pulmonologist. *Id.*

1 Ninth Circuit has held that “disability benefits may not be denied because of the claimant’s failure
2 to obtain treatment” where that treatment is not obtained due to financial issues. *Orn v. Astrue*,
3 495 F.3d 625, 638 (9th Cir. 2007) (citing *Gamble v. Chater*, 68 F.3d 319, 321 (9th Cir. 1995)).
4 Thus, the lack of treatment is not a proper basis for discrediting A.P.’s testimony.

5 B. Harmless Error and Nature of Remand

6 As explained above, the ALJ erred in finding A.P.’s testimony as to the extent of her
7 limitations not credible. When an ALJ commits legal error, this Court must still uphold the
8 decision if that error is harmless. *Treichler v. Commissioner of Soc. Sec. Admin.*, 775 F.3d 1090,
9 1099 (9th Cir. 2014). An error is harmless if it is “inconsequential to the ultimate disability
10 determination.” *Id.* If the ALJ committed an error that was non-harmless, this Court has the
11 discretion to reverse the decision and remand, either for immediate calculation of benefits or for
12 further proceedings. *Id.*; 42 U.S.C. § 405(g).

13 1. Harmless Error

14 The burden of showing that an error is harmful falls upon the party attacking the agency’s
15 determination—typically the claimant. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).
16 The Ninth Circuit has been “cautious about when harmless error should be found.” *Brown-*
17 *Hunter*, 806 F.3d at 492; *See also Brown-Hunter*, 806 F.3d at 496 (finding failure to meet the
18 “clear and convincing” standard in a credibility determination is non-harmless error); *Lambert*,
19 980 F.3d at 1278 (finding failure to meet the “clear and convincing” standard in a credibility
20 determination is non-harmless error); *Smolen*, 80 F.3d at 1273 (similar). Ultimately, an error as to
21 lack of credibility can only be considered harmless when “no reasonable ALJ, when fully crediting
22 the testimony, could have reached a different disability determination.” *Marsh v. Colvin*, 792 F.3d
23 1170, 1173 (9th Cir. 2015). Put differently, the error “[a]n error is harmless only if it is
24 inconsequential to the ultimate nondisability determination.” *Brown-Hunter*, 806 F.3d at 494
25 (internal quotations omitted).

26 Thus, there are two questions presented: (1) did legal error infect the credibility
27 determination; and (2) did the adverse credibility determination infect the ultimate decision as to
28 disability?

On the first point, because the ALJ erred regarding each of the three bases of finding A.P. not credible (medical reports, activities of daily living, and treatment history), it is obvious that legal error infected the ALJ's credibility determination. *See, e.g., Brown-Hunter*, 806 F.3d at 494 (finding adverse credibility determination that was erroneous for failure to state specific, clear, and convincing reasons for finding testimony not credible per medical reports was harmful).

On the second point, the Court cannot say that the adverse credibility determination was "inconsequential to the ultimate nondisability determination." *Brown-Hunter*, 806 F.3d at 494. Specifically, the decision not to credit A.P.'s testimony that she was totally disabled informed the ALJ's determination at step four of the analysis that A.P. maintained some residual functional capacity allowing her to perform light work. AR 26-27. Specifically, the ALJ found she could perform certain tasks including, e.g., occasionally climbing stairs and ramps, and ability to stoop, kneel, crouch, and crawl and ability to maintain occasional interaction with supervisors, coworkers, and members of the public. *Id.* And this finding that A.P. could perform light work informed the ultimate decision that A.P. was not disabled. Specifically, based upon this determination as to residual functional capacity, at step five of the analysis the ALJ determined that there were jobs that exist in significant numbers in the national economy that A.P. could perform. *See* 20 C.F.R. §§ 404.1520(a)(4)(v) (considering if work can still be performed based upon residual functional capacity). Because there were such jobs in the economy accommodating ability to perform only light work (such as photocopy machine operator, non-postal mail clerk, and office helper) the ALJ found A.P. not disabled. *See* AR 33-34. Accordingly, the Court cannot say that the adverse credibility determination was inconsequential to the disability determination; the ALJ's finding of A.P.'s residual functional capacity informed the outcome. *See also See Treichler*, 775 F.3d at 1097 (finding error as to credibility determination harmful); *Brown-Hunter*, 806 F.3d at 494 (similar). Accordingly, A.P. has established harmful error.

2. Nature of Remand

When remand for harmful error is appropriate the Court has two options: (1) remand for further proceedings; or (2) remand for immediate calculation of benefits. *See Treichler*, 775 F.3d at 1099. Here, the former is appropriate.

1 The Commissioner argues that, to the extent the Court finds legal error, the proper course
2 would be to remand to the agency for further proceedings. D's Mot. at 16. A.P. argues that either
3 remand for immediate calculation of benefits or remand for further proceedings would be
4 appropriate. Pl's Mot. at 1, 8-9.

5 It is rare to reverse for calculation for benefits. *Treichler*, 775 F.3d at 1099. Rather, the
6 ordinary course is to remand for additional investigation. *See id.* Specifically, this is appropriate
7 when the record does not support the ALJ's decision, the ALJ has not considered all the relevant
8 factors, or the reviewing court cannot fully evaluate the ALJ's decision on the record before it.
9 *See id.* The rare circumstance that allows this Court to remand for immediate calculation of
10 benefits is defined by the three-step "credit-as-true" rule. *Id.* at 1100. The following three steps
11 must be met: (1) the ALJ has failed to provide legally sufficient reasons for rejecting evidence,
12 whether claimant testimony or medical opinion; (2) the record has been fully developed and
13 further administrative proceedings would serve no useful purpose; and (3) if the improperly
14 discredited evidence were credited as true, the ALJ would be required to find the claimant disabled
15 on remand." *Burrell v. Colvin*, 775 F.3d 1133, 1141 (9th Cir. 2014).

16 As explained above, the ALJ committed legal error, satisfying step one. However, the
17 second step of the credit-as-true rule asks the Court to consider whether further administrative
18 proceedings would serve a useful purpose. *See Burrell*, 775 F.3d at 1141. For the reasons
19 explained below, further proceedings would be useful.

20 Generally, further proceedings are useful where there are other bases in the record, aside
21 from legal error, that could support the ALJ's finding. For example, in *Brown-Hunter*, despite the
22 Ninth Circuit's conclusion that there was harmful error, the court held that remanding for an
23 immediate award of benefits was inappropriate. *Brown-Hunter*, 806 F.3d at 495. Specifically,
24 there were inconsistencies in the record that raised questions about the extent of the claimant's
25 pain, such as medical evidence finding that her pain averaged a 5 out of 10 and that she could
26 independently perform her activities of daily living. *Id.* at 496. The record in that case also
27 suggested that the claimant's pain was adequately controlled with medication and that she was
28 able to function well. *Id.* So, although the ALJ failed to meet the clear and convincing standard in

1 discrediting the testimony, remand remained useful. *Id.* Similarly, in *Treichler*, the Ninth Circuit
2 remanded for further proceedings even though the ALJ erred in their credibility determination
3 because there were significant factual conflicts in the record between the claimant's testimony and
4 the objective medical evidence. 775 F.3d at 1104, 1107.

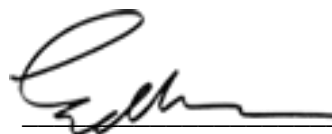
5 Similarly, here, there are inconsistencies in the record that could be resolved through
6 further proceedings and that could inform, amongst other aspects of the analysis, the credibility
7 determination. For example, as the Commissioner points out in their brief, A.P.'s self-
8 discontinued use of her walker and termination from physical therapy for lack of participation is
9 inconsistent with her testimony regarding her lack of balance and physical pain. *See* D's Mot. at 9
10 (citing AR 785, 789). But elsewhere in the record, A.P. reported to her physical therapists that she
11 stopped using her walker because she felt like it was making matters worse. AR 484. As further
12 proceedings would be useful to resolve these points and allow for the ALJ to restate her reasoning
13 regarding the credibility determination with more specificity, the Court find that remand for
14 further proceedings is appropriate.

15 IV. CONCLUSION

16 For the foregoing reasons, the Court concludes that ALJ Benton committed clear error by
17 discrediting A.P.'s testimony based upon medical evidence, activities of daily living, and
18 treatment history. Accordingly, the Court **GRANTS** A.P.'s motion for summary judgment and
19 **DENIES** defendants' cross-motion. The Court remands the case to the ALJ for further
20 proceedings.

21
22 **IT IS SO ORDERED.**

23
24 Dated: January 3, 2024

25
26 

27 EDWARD M. CHEN
28 United States District Judge